



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-167778

November 20, 1973

The Atchison, Topeka and Santa Fe
Railway Company
P. O. Box 1738
900 Jackson Street
Topeka, Kansas 66628

Attention: S. H. Goodwin
Auditor of Revenues

Gentlemen:

Claim for

We refer to your letters to our Transportation and Claims Division regarding the refusal to allow your claims on nine supplemental bills for additional transportation charges. The appendix to this decision contains a list of those bill numbers and other pertinent information.

We are treating your letters as a request to review the action taken by the Division because of your allegations pertaining to the application and interpretation of the period of limitations set forth in section 322 of the Transportation Act of 1940, as amended by Public Law 85-762, approved August 26, 1958, 49 U.S.C. 66, in light of the Court of Claims' decision in Erie Lackawanna Railway Company v. The United States, 439 F. 2d 194 (1971).

In each settlement the Division barred the difference between an amount later claimed and an overcharge initially deducted; that is, amounts in excess of those deducted were determined to be barred. Also, the amounts included in the supplemental bills for port charges were disallowed. The supplemental bills were received in the General Accounting Office more than 3 years after original payment, but within 3 years of the date of deduction.

You raise the question, whether, in view of Erie, allowance is limited to the amount deducted under 49 U.S.C. 66 where the carrier's claim is received in the General Accounting Office more than 3 years from the date of original payment but less than 3 years from the date of the deduction.

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We enclose a copy of our decision of February 13, 1973, B-175654, to Trans Country Van Lines, in which we outline our reasons for not following Erie in the audit and settlement of transportation payments and claims.

Also, as you are aware the port terminal charge has been held by the Interstate Commerce Commission to be inapplicable to export shipments from Pacific Coast Ports in California in United States v. Southern Pacific Company, 337 I.C.C. 504. In United States v. Southern Pacific Company, Civil Action 1695-71, in the United States District Court for the District of Columbia, by order dated June 2, 1972, Judge Joseph C. Waddy sustained the decision of the Commission and entered judgment in favor of the United States for the amount there involved, denying defendant's cross-motion for summary judgment which sought to reverse the Commission's final decision. An appeal from the District Court's decision is now pending in the United States Court of Appeals for the District of Columbia Circuit under its Docket 72-1953. Unless the I.C.C. and District Court decisions are reversed, the disallowance of the port service charges is proper.

Accordingly, and for the reasons set forth in our decision of February 13, 1973, to Trans Country Van Lines, the action taken by the Division on the nine supplemental bills was correct and is sustained.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

Enclosures

B-154778

Appendix

| <u>Your Supplemental Bill No.</u> | <u>Our Claim No. TK-</u> | <u>Amount Claimed</u> | <u>Amount Barred</u> | <u>Amount Disallowed</u> |
|---------------------------------------|------------------------------|---------------------------|--------------------------|------------------------------|
| 683358-B | 959488 | \$157.58 | \$ 29.24 | \$128.34 |
| 683429-A | 960231 | 589.96 | 566.40 | 23.56 |
| 684911-A | 960688 | 44.90 | 14.64 | 30.26 |
| 683432-A | 960228 | 589.96 | 566.40 | 23.56 |
| 683433-A | 960227 | 589.96 | 566.40 | 23.56 |
| 681055-A | 958429 | 135.51 | 46.22 | 89.29 |
| 681546-A | 956767 | 108.85 | 45.35 | 63.50 |
| 684845-A | 960691 | 79.77 | 51.89 | 27.88 |
| 684844-A | 960692 | 79.77 | 51.89 | 27.88 |